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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 429th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 May 2000, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.429/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of El Salvador (continued) (CAT/C/37/Add.4)

Conclusions and recommendations of the Committee

1. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the initial report of El Salvador.

2. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following text:

"1. The Committee considered the initial report of El Salvador (CAT/C/37/Add.4) at its 422nd, 425th and 429th meetings, held on 9, 10 and 12 May 2000 (CAT/C/SR.422, 425 and 429) and adopted the following conclusions and recommendations.

A. Introduction

2. El Salvador became a party to the Convention on 17 June 1996, without reservations. It has not made the declarations provided for in articles 21 and 22.

3. The report complies with the general guidelines regarding the form and contents of initial reports approved by the Committee.

4. The consideration of the report gave rise to a frank and constructive dialogue with the representatives of El Salvador, which the Committee appreciates and acknowledges.

B. Positive aspects

5. The Constitution of the Republic gives legal force to all international treaties which have been ratified, while stipulating that the law may not change or derogate from a treaty's provisions while it is in force and that in the event of a conflict between the treaty and the law, the treaty shall take precedence.

6. The promulgation and effective observance of the new Penal Code and Code of Criminal Procedure, whose provisions include important guarantees for the protection of fundamental human rights, should contribute to the better fulfilment of the State's obligations under the Convention.

7. Among those provisions, the Committee attaches particular importance to the following:

(a) The imprescriptibility of both penalties and criminal proceedings in the prosecution of crimes against humanity, including torture;

(b) The attribution of jurisdiction to national courts for the judgement of offences affecting internationally protected property or universally recognized human rights, regardless of by whom and where such offences are committed;

(c) The requirement of written orders authorizing detentions, and the establishment of strict time limits within which a detainee must be brought before a court and the court must give a ruling regarding the detainee's release or remand;

(d) The obligation for national courts to judge individuals charged with offences affecting internationally protected property, in the event that their extradition is rejected.

8. The creation of the Office of the Procurator for the Protection of Human Rights and the significant activity undertaken by this institution, both in its duties of supervising respect and guarantees for human rights and in the development of human rights promotion and education programmes, particularly those intended for law enforcement personnel.

9. The creation of prison supervision courts responsible for ensuring the proper enforcement of sentences and respect for the rights of all persons deprived of liberty.

10. The human rights education activities conducted by the Salvadoran Institute of Human Rights, the Judicial Service Training Colleges and the National Public Security Academy.

11. There is no provision in penal legislation which allows torture to be justified by invoking the order of a superior or public authority. On the contrary, the National Civil Police Organization Act expressly excludes that possibility and, under the general provisions of the Penal Code, both the physical perpetrator of the offence and the person or persons ordering it incur criminal liability.

C. Factors and difficulties impeding the application of the Convention

12. The profound alteration in the habits of peaceful coexistence and respect for human rights brought about by the prolonged internal armed conflict ended in 1992, which has required not only the creation or transformation of legal and political institutions, but more fundamentally a process of cultural renewal, which is by nature lengthy.

D. Principal subjects of concern

13. The country's penal legislation does not adequately define the offence of torture in terms consistent with article 1 of the Convention. The type of offence referred to in the Penal Code does not cover all the possible objectives of the offence according to the Convention.

14. The absence of rules governing torture victims' right to fair and adequate compensation, at the State's expense, and the lack of any State policy providing for as full rehabilitation as possible of the victims.

15. The maintenance in the Code of Criminal Procedure of confessions made out of court, in contradiction with the Constitution, which gives legal force only to confessions made before a judicial authority.

16. The absence of legal provisions opposing expulsion, return or extradition in the event of substantial grounds for believing that the person concerned would be in danger of being subjected to torture.

17. The occurrence, during the period covered by the report, of numerous acts of torture and cruel, inhuman or degrading treatment, as well as of the disproportionate or unnecessary use of force by police and prison personnel, according to reports by the Office of the Procurator for the Protection of Human Rights and other reliable sources.

18. Cases of extrajudicial executions, whose victims show signs of torture, which, though very infrequent, would appear to reveal a persistence of the criminal practices employed during the armed conflict superseded by the Peace Agreements.

## E. Recommendations

19. The offence of torture should be defined in terms complying with article 1 of the Convention.

20. The right of torture victims to fair and adequate compensation at the State's expense should be regulated, with the introduction of programmes for as full as possible physical and mental rehabilitation of the victims.

21. Recognition of out-of-court confessions should be removed from the Code of Criminal Procedure, on the ground that it contravenes the relevant constitutional guarantee.

22. Legal provisions should be introduced opposing expulsion, return or extradition in circumstances referred to in article 3 of the Convention.

23. Human rights education and promotion activities should be continued, with the introduction of human rights training into formal education programmes intended for new generations.

24. The State is urged to adopt measures ensuring that any allegation of suspected torture is promptly and impartially investigated and, if proved, suitably penalized.

25. The declarations referred to in articles 21 and 22 of the Convention should be made.

26. The second report (first periodic report) should be submitted within the coming year, in order to keep to the schedule provided for in article 19 of the Convention.

27. The Committee hopes in due course to receive information and replies to the questions raised during consideration of the report, as offered by the representatives of El Salvador."

3. The CHAIRMAN invited the head of the delegation of El Salvador to comment on the Committee's conclusions and recommendations.

4. Mr. LAGOS PIZZATI (El Salvador) thanked the Committee for the fruitful dialogue conducted and for its conclusions and recommendations, which would be submitted to the competent authorities for detailed analysis. It was also hoped that the first periodic report of El Salvador could be submitted in the next 12 months and that it would show that the conclusions and recommendations had been successfully applied.

5. The CHAIRMAN said that the Committee had appreciated the openness and seriousness with which El Salvador had approached the subject matter.

6. The delegation of El Salvador withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Third periodic report of the Netherlands (continued) (CAT/C/44/Add.4; CAT/C/44/Add.8)

7. At the invitation of the Chairman, the members of the delegation of the Netherlands resumed their places at the Committee table.

8. The CHAIRMAN invited the Netherlands delegation to respond to the questions raised by the Committee at a previous meeting.

9. Mr. DUMORÉ (Netherlands) said that his Government was committed to complying with the Committee's request that no asylum-seekers should be expelled while their individual cases were under consideration. The Netherlands would therefore halt any possible expulsions.

10. Responding to the question raised by Mr. El Masry, he said that further information had been requested relating to the plebiscite on self-determination in the Antilles, in particular the level of involvement of the United Nations, in the context of General Assembly Resolution 1514 (XV), containing the Declaration on the granting of independence to colonial countries and peoples. The matter did not appear to lie within the Committee's competence but information could be provided if necessary.

11. Turning to the legal situation surrounding the visit of General Pinochet to the Netherlands, he said that the matter involved the principle of expediency and the fact that a prosecution must be feasible. The Public Prosecutor had decided not to bring a case, believing that a successful prosecution was unlikely since General Pinochet enjoyed immunity in Chile and

it would have been almost impossible to gather evidence. The obligation to investigate the question of where a prosecution should take place had been fulfilled and further investigation was therefore unnecessary. By that stage, General Pinochet had left the Netherlands. Since then, however, there had been a change for the better in that immunity from prosecution was no longer considered to be possible for heads of State under international human rights law.

12. In answer to the question raised by Mr. Yu Mengjia, he said that the fact that asylum-seekers had no identification documents was not a reason for their requests to be rejected or for their subsequent expulsion. All such requests were thoroughly examined in the light of the circumstances and were rejected only if a person could not adequately prove that he required protection from persecution to which he would be subject if he returned to his own country.

13. Mr. STRUYKER-BOUDIER (Netherlands), responding to another question raised by Mr. Yu Mengjia, said that the Convention was fully incorporated into Netherlands domestic law under the Act implementing the Convention against Torture, which had come into force on 20 January 1989. In addition, according to the Constitution the provisions of the Convention were directly applicable in the Netherlands legal system. Article 3 of the Convention was regularly invoked before the national courts. With regard to article 1.20 of the Netherlands Constitution, national courts were not allowed to review the compatibility of Acts of Parliament with the Constitution, but they were permitted to review compatibility with international conventions, including the Convention against Torture. In case of conflict, international instruments took precedence over the national Constitution.

14. The answer to the question raised by Mr. Yakovlev was that under the Act implementing the Convention against Torture, perpetrators of acts of torture were liable to 15 years' imprisonment or, if the victim died, a life sentence. With regard to the place of the prohibition of torture in Netherlands criminal law, reference should be made to the first part of the country's initial report.

15. Referring to the events that had taken place in Rotterdam in November 1999, he emphasized that they had not involved torture or ill-treatment by the police. Police officers had closed off a neighbourhood to search people for firearms, which had subsequently been confiscated. The Rotterdam District Court had later decided that the searches conducted were illegal since, under Netherlands law, a person could be searched only if there were specific indications that he or she was carrying a weapon.

16. Regarding the events surrounding the European Union Amsterdam Summit in June 1997 and the complaints made of illegal arrest, the Amsterdam District Court had decided that the Netherlands Criminal Code did not provide a sufficient legal basis for the arrests in all cases. Complaints had also been made regarding the conditions of detention, including the use of plastic handcuffs and the fact that female detainees had been searched by male police officers. Investigations had been conducted by the Amsterdam Police Complaints Commission, the Amsterdam District Court, an Independent Commission of Inquiry and the National Ombudsman. The Ministry of the Interior and Justice had subsequently endorsed the conclusions and recommendations made. The authorities would be better equipped in the future to deal with such large-scale disturbances. The number of female police officers available for

conducting searches, was increasing but was still insufficient. Women represented 16 per cent of all executive personnel. Since 1996 innovative projects had been introduced for regional police forces, subsidized by the Ministry of the Interior and Justice. The issues of part-time work and childcare had received attention, and the first female Chief of Police had recently been appointed.

17. Information had also been requested on the special team set up to prosecute war crimes and other crimes against humanity, including torture. The team had been in operation for just over a year. The biggest problem it faced was that of finding witnesses willing and able to make statements that could be used in court. Many witnesses had been traumatized by their experiences; some had been threatened and were frightened to testify. Despite the problems encountered, the special team was an invaluable instrument in the fight against torture and it was hoped that with time and perseverance the efforts made would pay off.

18. Finally, he confirmed that evidence from anonymous witnesses, could be used in a Netherlands court. The Code of Criminal Procedure served as a framework for its use, but was subject to the general rules and principles governing fair trails, as set out in the European Convention on Human Rights. In such cases, criminal convictions were subject to review by the European Court of Human Rights.

19. Mr. BÖCKER (Netherlands), responding to the question raised by Ms. Gaer, said that supervisory committees had been set up in a number of regions to monitor conditions in police cells and would become compulsory in all regions as soon as an appropriate law had been enacted. Those committees issued annual reports to the Burgomaster, who in turn made an annual report to the Ministry of Interior and Kingdom Relations; they comprised members with relevant expertise and experience, including doctors, professors of penal law, municipal council members and directors of penal establishments. Members of the Public Prosecution Service were also able to participate in personam.

20. With regard to complaints made by individuals to the National Ombudsman on police conduct, between 1994 and 1999 some 500 to 600 complaints had been received each year. About 150 to 200 cases had led to reports by the National Ombudsman and in about 40 per cent of those it had been found that police conduct had been inappropriate. The complaints made related to all aspects of police work, including failure to answer letters or excessive delay in doing so (about 60 to 70 per cent of all cases). Another large proportion of complaints concerned the way in which the police dealt with the public, for example the use of overfamiliar forms of address and refusal to apologize for unjustified arrests. Between 20 and 40 reports each year concerned the use of force by the police, and in about 30 per cent of such cases it had been found that the police had acted inappropriately. Between 6 and 28 reports concerned conditions in police cells; a finding of inappropriate police conduct had been made in about 40 per cent of such cases.

21. The information on compensation to victims provided in the report related to victims of all categories of crimes, including torture. However, the information concerning the intervention of bailiffs and the Criminal Injuries Compensation Fund was not directly applicable to cases of torture. Should an allegation of torture be dealt with by the courts and result in compensation for

the victim, the Government would, by definition, be required to meet the costs and would settle the matter immediately with the victim. The delegation was unaware of any proceedings concerning torture that had resulted in compensation for the victim.

22. Mr. de BOER (Netherlands), responding to a question concerning the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the Extra Security Institution, said that the Government had recently commissioned an independent study of the psychological effects on detainees of a prolonged stay in the Institution. The study would shortly be published together with the Government's views on its content. Guards employed at the Institution received special instructions because the risk of its inmates escaping and committing further violent crimes posed an unacceptable threat to society. At least two guards must be present to handle individual detainees. During out-of-cell time, guards were in principle not allowed to share the same space as the inmates; that rule was needed to prevent guards from being taken hostage. On 15 September 1999 a prisoner had been killed in a fight between two prisoners during the out-of-cell period. The fight had lasted for only about two minutes so that the guards, who were physically separated from the prisoners, had been unable to intervene. The National Department of Criminal Investigations had investigated the circumstances of the prisoner's death and concluded that the guards had not been at fault since they had merely followed instructions. Medical attention had been provided within a very short time.

23. Mr. DAAL (Netherlands), replying to the Committee's questions concerning the Netherlands Antilles, said that the last sentence of paragraph 40 of the report concerning the Antilles and Aruba (CAT/C/44/Add.4) had been poorly formulated. The fact was that jurisdiction for crimes committed outside the territory of the Netherlands Antilles by persons without Antillean citizenship or Netherlands nationality was not clearly addressed in the criminal legislation. However, such jurisdiction was considered to exist in cases of serious crime where prosecution would be in the interest of the world community. The Government of the Antilles had therefore abandoned the common practice under criminal law and established universal jurisdiction for the crime of torture. Article 6 of the National Ordinance granted jurisdiction to prosecute the crime of torture, regardless of where it had been committed and of the citizenship or nationality of the perpetrator.

24. Since its establishment in 1995, the Complaints Committee for Police Brutality had received an average of 17 complaints a year from citizens, mostly concerning police brutality or ill-treatment and improper attitudes or behaviour. The responsible police entities had been reasonably willing to cooperate. On completing its investigations, the Complaints Committee submitted its findings to the Minister of Justice who referred the matter, where appropriate, to the Public Prosecutor. The Committee's findings were also referred to Parliament with a view to subjecting police behaviour and government policy to a system of checks and balances. The general public was well informed of the Committee's existence through the media and the reports to Parliament and its work had enhanced awareness in the police organization of the need to prevent police brutality and ill-treatment.

25. Most of the cases investigated concerned the issue of proportionality in the use of force rather than ill-treatment or brutality as such. The fact that there had been no serious criminal cases since the previous report to the Committee against Torture was probably due to the

continuous improvement of police training, the immediate reporting of the use of force, assessment of individual cases by the public prosecutor and the establishment of the Complaints Committee.

26. One third of investigations by the National Investigation Bureau (NIB) in 1997-1998 concerned ill-treatment in the Koraal Specht Prison. The remaining investigations concerned alleged crimes such as fraud by public officials. Some NIB investigations of the Police Riot Squad had not resulted in prosecutions. However, the recommendations of a commission that had recently carried out an in-depth investigation of the police force were currently being implemented.

27. There had been one complaint about the use of electric shock devices for torture in 1997 by a suspect in a drug smuggling case. Her allegations had not been borne out by the subsequent investigation. However, such devices were used by the police as a means of defence against violent watchdogs in house searches. Their use was strictly supervised by senior police officers and the public prosecutor.

28. Ms. MARTIJN (Netherlands), replying to further questions concerning the Netherlands Antilles, said that the independent Board of Visitors had kept a watchful eye on developments in the Koraal Specht prison facility. However, as it did not enjoy the requisite legal authority, the Government was introducing an ordinance to ensure that it commanded respect and that its decisions were implemented.

29. Under supplementary legislation governing the prison system in the Netherlands Antilles, a Committee of Supervision had been established for each prison and had commenced its activities in February 2000. The 13-member Committee was chaired by a judge and composed, inter alia, of lawyers, physicians, a public prosecutor, a businessman, the manager of a local hospital, a court secretary and a sociologist. It met once a month. Prison wardens attended the meetings and submitted reports. Members had access to all prison reports and other official documents and were authorized to visit all parts of a facility at any time, accompanied, if necessary, by an expert. Special commissioners appointed from among the members of the Committee visited the prisons once a week to receive complaints. Conversations with inmates were normally held in the absence of the prison staff but the latter were given the opportunity to present their version of events. When wardens attended Committee meetings, they were informed of decisions based on the commissioners' reports and instructed to implement the recommendations. Between February and April 2000, 25 complaints had been discussed with wardens and corrective action taken where necessary.

30. There had been a significant decline in inter-prisoner violence in the Koraal Specht prison as a result of more frequent patrolling of the facility by the Mobile Police Unit. Following riots and destruction of prison property by prisoners and the resulting ill-treatment of inmates by prison guards, the courts had issued strict instructions regarding the treatment of prisoners and ordered the Government to compensate the victims. The guards had subsequently lost authority and the inmates had acquired a false sense of power and superiority. That situation had been to some extent remedied by the introduction of the Mobile Police Unit, whose untimely removal would undoubtedly lead to a renewed loss of control. Between January and December 1998, the prison physicians had reported 13 cases of violence, of which five had

occurred between prisoners, six had been reported by the Mobile Police Unit together with prison personnel, and two had been reported by prison personnel. In March 2000, several prisoners had reported beatings by the Mobile Police Unit. The allegations and the modus operandi of the Unit had been investigated by the Committee of Supervision, which had submitted its findings and recommendations to the Government. The Department of Justice had been instructed to act on the recommendations, which included the establishment of a strict chain of command governing the action of the Mobile Police Unit, accurate recording of all incidents, the introduction of regulations governing cell inspections, the presence of an independent supervisor and the facility physician during inspections, and compensation for the destruction of inmates' belongings during inspections.

31. More violent inmates who refused or were unable to comply with prison regulations, who threatened or harassed other inmates or who continuously rebelled against the prison authorities were placed in the Extra Secure Division (EBA) for a period of one month. If their behaviour improved during that period, they were returned to their former division. The Committee of Supervision of the prison was informed by the warden of any decision to place a prisoner in the EBA and kept a close watch on the regime applied. One inmate had appealed against his detention in March 2000 and the Complaints Committee had ruled that the regime applied was disproportionate. His normal privileges had then been restored.

32. Two cases of sexual abuse had been confidentially reported to a psychologist. In another case, a prisoner who had had voluntary sexual intercourse with other inmates had been separated from them for his own protection and to prevent the spread of sexually transmitted diseases. His partners had undergone medical examinations and received treatment. Several cases of prisoners who were HIV-positive had been reported. One prisoner had died of AIDS in the prison hospital in 1998.

33. The prison administration monitored sexual violence on the basis of information from medical staff, social workers and complaints from inmates. No cases of sexual violence had been reported by medical staff during the period 1997 to 2000. The prisoners had been informed of their right to inform the special commissioners who visited the prison each week of ill-treatment, abuse or other forms of degrading treatment. So far no case of sexual violence had been reported.

34. Recruitment for the newly created internal mobile prison unit was now complete and the unit was undergoing special training prior to commencing operations in July. The findings and recommendations of the Committee of Supervision would be incorporated into the new unit's activities. Once it became operational, a final review would take place in order to assess the need for further deployment of the Mobile Police Unit at Koraal Specht.

35. She assured the Committee there could be no question of privatizing Koraal Specht. Her Government's attitude towards its human rights responsibilities under the Constitution ensured that activities relating to international obligations such as the Convention against Torture could never be delegated to private enterprise. Moreover, the Government intended to introduce national ordinances designed to ensure compliance with all her country's human rights obligations under international conventions.

36. Mr. van der KWAST (Netherlands), reading the replies of the absent Aruban delegation, said that the draft law to regulate the execution of custodial sentences (CAT/C/44/Add.4, para. 75) was currently being revised for a second time by Aruba's Advisory Council. It contained completely new provisions on the housing and treatment of persons deprived of their liberty, and was completely different from the law implemented under article I.3 of the Constitution, referred to in paragraph 78, which contained separate provisions on the penalization of torture and the establishment of universal jurisdiction. The entry into force of that law in June 1999 meant that the situation described in paragraph 86 of the report no longer applied. The current situation, therefore, was reflected in paragraph 87, which stated categorically that it was out of the question for a public servant to avoid conviction for torture by invoking the defence of an order given by his superior. Article 1 of the law penalizing torture served as a lex specialis to articles 313-318 of the Aruban Criminal Code, which made extensive provision against assault committed by public officials. The Aruban Government would provide further information in its next report on any inconsistencies between that article and the Convention. The statistical information the Committee had requested would be made available before the end of its current session.

37. Turning to the Committee's questions on protective measures, independent investigations and training, he said that the law on police training required police officers to have an adequate knowledge of human rights in general and of the human rights enshrined in the Aruban Constitution in particular, and to be willing to safeguard those rights. The use of force by the police was permitted only as a last resort and under strict conditions: firstly, the desired objective must justify the use of force, taking into account the dangers inherent in such use, and it must be impossible to achieve that objective by any other means; secondly, the use of force must not exceed the bounds of reasonableness and moderation, and finally the risks to all parties must be minimized. The use of preventive methods and techniques should always take precedence. Furthermore, pursuant to article 11 of the law on the use of force and security searches, any police officer who used force against persons in the exercise of his duties was obliged to report the matter immediately to his superiors. If such use of force resulted in serious physical injury - and in all cases in which a firearm had been used - the public prosecutor must be notified. Depending on the gravity of the offence, either the police force or the National Criminal Investigation Department conducted an investigation; about 10 such investigations were carried out every year. There had been no investigations or reports of sexual violence by police officers. Charges of police brutality were generally investigated by the Police Department.

38. Finally, with regard to anonymous witnesses, the term was not strictly correct. The identity of a seriously threatened witness was known to the judge, but not to the defendant, his lawyer or the prosecutor. The defendant's lawyer and the prosecutor had to question the defendant in such a way that his identity was not revealed.

39. The CHAIRMAN said he could not conceive of a situation such as that just described in relation to anonymous witnesses. He asked the previous speaker, in the absence of the Aruban delegation, to check the facts and report back to the Committee.

40. Ms. GAER (Alternate Country Rapporteur), recalling the earlier discussion on General Pinochet, asked whether the Netherlands Government would in future be prepared to

detain and prosecute a person alleged to have committed torture in, for example, Afghanistan. Secondly, she welcomed the assurance given by the delegation of the Netherlands Antilles that its Government would never entrust its responsibilities under the Convention to private interests. Finally, she expressed the hope that an Aruban delegation would be present when the Committee next convened to discuss the Netherlands report.

41. Mr. DUMORÉ (Netherlands) said that in general the answer to Ms. Gaer's first question was affirmative, although the Pinochet case was not the same as the hypothetical case that she had raised. However, international law on immunity had changed since Pinochet's visit to the Netherlands: at that time no prosecution had been possible owing to lack of evidence, whereas since then the Netherlands had implemented special measures that allowed prosecutors to search more widely for information and evidence.

42. Ms. GAER (Alternate Country Rapporteur) said that her question had not been altogether hypothetical, since it took into account reports submitted to the Committee by Netherlands NGOs in connection with alleged Afghan war criminals residing in the Netherlands.

43. The CHAIRMAN observed that the Committee had consistently taken the view that a State party, under articles 5-8 of the Convention, had both the jurisdiction and the obligation to investigate a situation such as that postulated by Ms. Gaer, with a view to effecting an arrest and prosecution.

44. The delegation of the Netherlands withdrew.

The public part of the meeting rose at 4.50 p.m.